

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ERIC MCCAIN,

Petitioner,

vs.

SCOTT R. FRAKES, N.D.C.S Director;

Respondent.

8:18CV190

**MEMORANDUM
AND ORDER**

This matter is before the court on two motions filed by Petitioner Eric McCain.

I. MOTION TO PROCEED IN FORMA PAUPERIS

Petitioner has filed a Motion for Leave to Proceed in Forma Pauperis (“IFP”). ([Filing No. 7.](#)) Habeas corpus cases attacking the legality of a person’s confinement require the payment of a \$5.00 fee. [28 U.S.C. § 1914\(a\)](#). As indicated in the court’s records, Petitioner has paid the \$5.00 fee. (*See* Docket Sheet.) Therefore, the court will deny Petitioner’s IFP motion as moot.

II. MOTION FOR APPOINTMENT OF COUNSEL

Petitioner has also filed a request that counsel be appointed to represent him in these habeas proceedings. ([Filing No. 6.](#)) “[T]here is neither a constitutional nor statutory right to counsel in habeas proceedings; instead, [appointment] is committed to the discretion of the trial court.” *McCall v. Benson*, 114 F.3d 754, 756 (8th Cir. 1997). As a general rule, counsel will not be appointed unless the case is unusually complex or the petitioner’s ability to investigate and articulate the claims is unusually impaired or an evidentiary hearing is required. *See, e.g., Morris v. Dormire*, 217 F.3d 556, 558-59 (8th Cir. 2000), *cert. denied*, 531 U.S. 984

(2000); *Hoggard v. Purkett*, 29 F.3d 469, 471 (8th Cir. 1994). See also Rule 8(c) of the *Rules Governing Section 2254 Cases in the United States District Courts* (requiring appointment of counsel if an evidentiary hearing is warranted). The court has carefully reviewed the record and finds there is no need for the appointment of counsel at this time. Petitioner's motion is denied without prejudice to reassertion.

IT IS ORDERED that:

1. Petitioner's Motion for Leave to Proceed IFP ([filing no. 7](#)) is denied as moot.
2. Petitioner's Motion for Appointment of Counsel ([filing no. 6](#)) is denied without prejudice to reassertion.

Dated this 5th day of October, 2018.

BY THE COURT:

s/ *Richard G. Kopf*
Senior United States District Judge